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90-1906

Supreme Court, U.S.
FILED
JUN 14 1991
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

EDITH MAE GRACEY,

Petitioner,

vs.

FREDERICK L.REIGLE, Esquire,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

EDITH MAE GRACEY, pro se
512 Mifflin Boulevard
Shillington, Pennsylvania 19607
(215) 777-8756

QUESTIONS PRESENTED

1. Is the United States Bankruptcy Court prevented by estoppel from selling the real estate property of debtor when the sale creates nondischargeable capital gains taxes?

2. Has debtor's exemption in the property been impaired, thereby permitting avoidance of judicial liens pursuant to 11 U.S.C.§522 (f)(1) ?

3. Whether the conflict-of-interest between Trustee Frederick Reigle,Esquire and counsel for an adversary creditor, which has been sanctioned by The United States Court of Appeals For The Third Circuit, calls for an exercise of The Supreme Court's power of supervision.

4. Should certiorari be granted in this case to allow debtor an opportunity to analyze and evaluate very recent decisions of the Supreme Court (within the past few days regarding taxes, exemptions,Chapter 11) that affect this case ?

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS,STATUTES	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING PETITION	5
CONCLUSION	10

APPENDICES:

A.APPEALS COURT ORDER

B.STAY OF MANDATE

C.STAY OF AUCTION

D.ORDER OF COURT IN FIRST INSTANCE

E.PETITION FOR REHEARING DENIED

TABLE OF AUTHORITIES

STATUTES:	PAGE
28 USC 1254	2
Rule 17.1(a)(c)	2
U.S.Constitution Ninth Amendment	2,4
11 USC 524 (f)	4
11 USC 522 (f)	5,6,7
H.R.Rep.No.595	6
28 USC 3003 (c)(2)	8,9,10
11 USC 701	9
Rule 2014 (a)	9
CASES:	
IN RE: Souders,75 B.R. 427	6
IN RE: Simonson,758 F.2d 103(1985)	7
Mosser v.Darrow,341 U.S.267,271 71S.Ct. 680,682,95 L.Ed 927(1951)	9

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1990

EDITH MAE GRACEY, PETITIONER

VS.

FREDERICK REIGLE,ESQUIRE RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Edith Mae Gracey petitions for writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The Judgment Order of the Court of Appeals is Appendix "A".

JURISDICTION

The judgment of the Court of Appeals was entered on March 15,1991 (Appendix "A"). The petition for rehearing was denied(Appen"E") April 12,1991. The motion to stay the mandate was granted April 15,1991 for sixty days pending application for writ of certiorari. (Appendix "B"). A stay to prevent real estate auction was granted May 6,1991.(Appendix "C"). Jurisdiction of this Court is invoked under 28 U.S.C.§1254,Supreme Court Rule 17.1(a)(c).

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S.C.S.Constitution,Ninth Amendment

"The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

STATEMENT OF THE CASE

Edith Gracey owned three real estate properties which are appraised by the U.S.Bankruptcy Court for $390,000. During a divorce proceeding her former counsel did not enforce a court order which required her husband to pay all joint debts. The former counsel placed Edith Gracey in the bankruptcy court, chapter 7 to prevent a sheriff's sale when the spouse did not comply with the order. The former counsel has been sentenced to jail for twelve years for illegal drugs. Total debt on the two nursery schools and home was less than $100,000. Frederick Reigle,Esquire met with Gracey for three hours reviewing the entire case, agreed to represent her but was instead appointed Trustee a few weeks later.Reigle has prevented all efforts of Gracey to protect her livelihood property by paying 100% of all debt.Gracey has discovered that counsel for adversary creditor Meridian secretly,simultaneously,was serving as counsel to Reigle. Both objected to a triple net lease of one school for $40,000 per year.The school

was sold for $120,000 (financed by Meridian). Capital gains taxes have been created by the sale. Gracey appealed the sale. The appeals court ruled the lower courts erred in that a lease was permitted by the code,but did not reverse the sale. Certiorari was also denied. Gracey appealed the distribution of the funds and the conflict of interest between Reigle and counsel for the Bank, which is the subject of this petition. The bankruptcy court ruled there was no conflict. The district court and appeals court affirmed. However, the appeals court did grant a stay for sixty days to file for a writ of certiorari. Reigle then attempted to auction the second school. The appeals court granted a second stay to prevent the auction.

Both Meridian Bank and creditor "Day" have returned all good faith payments which Edith Gracey made to them. However, they continue to compound the interest and attach fees. Gracey believes they are violating her ninth amendment right to pay the debt,and 11 USC § 524 (f).

REASONS FOR GRANTING THE PETITION

ARGUMENT

1. ON THE PRESENT COURSE OF THIS CASE EACH SALE TRIGGERS ADDITIONAL CAPITAL GAINS TAXES WHICH WILL BE LARGER THAN THE ORIGINAL DEBT AND ARE NOT DISCHARGEABLE.CONGRESS DID NOT INTEND THE DEBTOR TO LEAVE THE BANKRUPTCY COURT WITH NO PROPERTY AND A LIFETIME OF FUTURE TAX DEBT.THE BANKRUPTCY COURT IS PREVENTED BY ESTOPPEL FROM TAKING A COURSE OF ACTION WHICH CONFLICTS WITH THE INTENT OF CONGRESS.

Whether or not Edith Gracey should have been originally placed in the bankruptcy court with huge assets ($400,000) and debts of only $100,000 by her former attorney, the court is prevented by estoppel from proceeding with the sale of the real estate. The properties are income producing for all parties to share. The intent of Congress in enacting 11 U.S.C. § 522(f)was to provide debtors in a Chapter 7 proceeding with a "fresh start," including some equity in a residence,upon the conclusion of the bankruptcy

proceedings.See 11 U.S.C. §522(f);H.R.Rep.No. 595,95th Cong.,1st Sess.,362(1977),reprinted in 1978 U.S.Code Cong.&Ad.News 5787,5963,6317. Congress has stated repeatedly that the purpose of the U.S.Bankruptcy Court is not to render a debtor destitute. In the Gracey case that is precisely what is happening. Therefore, the court is prevented by estoppel from changing the intent of Congress and cannot disregard the impact and calculation of tax consequences.

2. AT ISSUE IN THIS CASE IS THE OVERSTATED DEBT OF CREDITORS MERIDIAN BANK AND BARBARA DAY AND THE DISTRIBUTION OF PROCEEDS TO THEM AFTER THE SALE OF THE GRACEY NURSERY SCHOOL PROPERTY. DEBTOR'S EXEMPTION IN THE PROPERTY WAS IMPAIRED.

Creditors Meridian Bank and Barbara Day have returned payments made by Gracey in good faith but have compounded interest and added fees. The real estate property was the debtor's livelihood. Day confessed judgment,without a hearing, which violated state and federal law. In Re:Souders,75 B.R.427.

The distribution of sale funds to Day was based on a nonconsentual judicial lien. The excess payment of funds to Day impaired the exemption of Gracey. The Day judicial lien should then have been avoided under 11 U.S.C. §522(f). In Re Simonson,758 F.2d 103 (1985)(Circuit Judge Becker dissenting).

3. AT ISSUE IN THIS CASE IS AN APPARENT CONFLICT OF INTEREST BETWEEN TRUSTEE FREDERICK REIGLE, ESQUIRE AND COUNSEL FOR MAJOR ADVERSARY CREDITOR MERIDIAN BANK, WHICH HAS BEEN SANCTIONED BY THE UNITED STATES COURT OF APPEALS.

The Bankruptcy Court Order of March 23,1990 states"(4) the fact that counsel for a secured creditor served as counsel to the trustee in a separate, unrelated case does not affect the disinterestedness of the trustee or create a conflict of interest since neither the Bankruptcy Code nor the Rules of Professional Responsibility prohibit attorneys from working together on a given case while working on

opposite or different sides in an unrelated case; ".(Appendix page "D").

To say that Reigle and Althouse were merely " working together on a given case while working on opposite or different sides in an unrelated case" is an understatement of the facts. Possibly during the entire Gracey case there has been an undisclosed secret attorney/ client relationship between the Gracey trustee and the Gracey adversary creditor's counsel (a former federal law clerk). Efforts of Reigle to favor Meridian Bank included (but were not limited to) insisting that Gracey sign a divorce Stipulation in the state court which would "inure to the benefit of Meridian Bank". Gracey refused to sign. Although Meridian and Day returned the Gracey payments they both continue to compound interest, add fees,costs. Relevant to section (2) of the Order Gracey listed the Meridian Bank claim as disputed by the amount, which required the Bank to file a timely claim which they did not do,28 USC 3003 (c)(2). Reigle overpaid both creditors.

Upon appeal of the March 23,1990 Order,the U.S.District Court affirmed there was no conflict. The Third Circuit Court of Appeals affirmed also. (Appendix page "A "). Gracey believes that the Courts' decisions call for exercise of supervision of the Supreme Court. The Supreme Court has ruled in Mosser v.Darrow, 341 U.S. 267,271, 71 S.Ct.680,682,95 L.Ed 927 (1951). "Equity tolerates in bankruptcy trustees no interest adverse to the trust.This is not because such interests are always corrupt but because they are always corrupting. By its exclusion of the trustee from any personal interest,it seeks to avoid such delicate inquiries as we have here into the conduct of its own appointees by exacting from them forbearance of all opportunities to advance self-interest that might bring the disinterestedness of their administration into question". See also 11 USC §701 and Bky.Rule 2014(a). Reigle's attorney (Althouse) failed to file a timely claim in the bankruptcy court which he was required to do since Gracey disputed the amount of the debt, (Bankruptcy Rule 3003[c][2]).

Bankruptcy Rule 3003 (c)(2) states "Who Must File. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed,contingent,or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule;and creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution."

4. CERTIORARI SHOULD BE GRANTED IN THIS CASE TO ALLOW DEBTOR AN OPPORTUNITY TO ANALYZE AND EVALUATE VERY RECENT DECISIONS OF THE SUPREME COURT THAT AFFECT THIS CASE.

CONCLUSION

Within the past few days a number of relevant cases have addressed the issues of taxes and exemptions and Chapter 11. All of the decisions impact on this case. Therefore, certiorari should be granted.

Respectfully submitted

Edith Mae Gracey

Edith Mae Gracey,prose

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-1363

IN RE:EDITH M.GRACEY,Debtor Appellant

On Appeal From the United States District Court
for the Eastern District of Pennsylvania

(D.C.Civil No.90-00250)

District Judge:Charles R.Weiner

Submitted Under Third Circuit Rule 12(6)

February 8,1991

Before:BECKER,SCIRICA and NYGAARD,Cir.Judges

JUDGMENT ORDER

After consideration of all contentions raised by the appellant,it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

(s) Edward R.Becker
Circuit Judge

ATTEST:

(s) Sally Mrvos
Sally Mrvos,Clerk

DATED: MAR 15 1991

"A"

UNITED STATES COURT OF APPEALS THIRD CIRCUIT

No.90-1363 April 2,1991

Re: IN RE: Edith M.Gracey,Debtor, Appellant

Present: BECKER, Circuit Judge

1.Motion by,Edith M.Gracey,Appellant for Emergency Stay Pending decisions of this Court and a Decision by the U.S.Supreme Court on Bankruptcy Code 522(f)(1),which the Court may wish to treat as motion to Stay the mandate pending filing a petition for writ of certiorari in the U.S.Supreme Court.

2.For your information:Judgment Order was filed March 15,1991 in this appeal. A petition for rehearing is currently pending before the court in banc in this case.

3.Since their were no appellee briefs in this appeal,the appeal was submitted on appellant-briefs only,and no response is expected to the above motion.

(s)Barbara Jacobson
Deputy Clerk-Direct Dial 597-8465

ORDER

The foregoing Motion is granted.The mandate is stayed for a period of sixty(60)days pending filing of a petition for certiorari.

(s)Edward R.Becker
Circuit Judge

Dated:Apr 15 1991

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 901363

(D.C.Bk.No.90-00250)

Re:IN RE:EDITH GRACEY,Debtor,Appellant

Present:BECKER,SCIRICA and NYGAARD,

Circuit Judges

1.Appellant's Emergency Motion for Stay to Prevent Auction Of Real Estate on May 6,1991.

In the above entitled case.
Judgment Order was filed March 15,1991.Petition for Rehearing was denied by Order of April 12, 1991,and An Order was filed April 15,1991 granting appellant's motion to Stay the Mandate to and including June 18,1991.

(s)Barbara Jacobson

Deputy Clerk-Direct Dial 597-8465

ORDER

The foregoing Motion is granted.

By the Court,

Edward R.Becker (s)

Circuit Judge

Dated: May 6, 1991

C

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:
EDITH M. GRACEY : Case No. 84-00778 T
a/k/a MRS. J. RAYMOND GRACEY,:
Debtor

ORDER

AND NOW, this 23rd day of March, 1990, it is ORDERED that the objection filed by debtor to the method of distribution is DISMISSED as the court finds that: (1) debtor's appeals regarding the sale of property located at 525 Philadelphia Ave. ("the property") do not affect our jurisdiction over this objection as no stay of our November 22, 1989 order authorizing the sale free and clear of liens is presently in effect;[1] and (2) the fact that secured creditors did not file timely proofs of claim is irrelevant to the distribution of the sale proceeds since secured creditors need not

1. By order dated December 12, 1989, the District Court dissolved its earlier order staying our November 22, 1989 order authorizing the sale of the property.

file proofs of claim in a Chapter 7 proceeding when the collateral is to be sold free and clear of liens. Under such circumstances, the liens attach to the proceeds of sale and state lien priority law, not the law governing proofs of claim, applies to determine the distribution of the sale proceeds; and (3) 11 U.S.C. 506(b) permits a secured creditor to receive interest, costs and attorney's fees when the value of the collateral exceeds the amount of the secured creditor's claim and the agreement between the secured creditor and the debtor provides for such charges; and (4) the fact that counsel for a secured creditor served as counsel to the trustee in a separate, unrelated case does not affect the disinterestedness of the trustee or create a conflict of interest since neither the Bankruptcy Code nor the Rules of Professional Responsibility prohibit attorneys from working together on a given case while working on opposite or different sides in an

unrelated case; and (5) debtor has not introduced evidence to substantiate her claim that the distributions made by the trustee to the tax claim bureau and the Days were incorrect.

Reading, PA

s/ Thomas M. Twardowski
Bankruptcy Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-1363

IN RE: EDITH M.GRACEY,Debtor Appellant

(D.C.Civil No. 90-00250)

SUR PETITION FOR PANEL REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

PRESENT:SLOVITER,Chief Judge,BECKER,STAPLETON,
MANSMANN,GREENBERG,HUTCHINSON,SCIRICA,COWEN,
NYGAARD,and ALITO,Circuit Judges.

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges in active service,and no judge who concurred in the decision having asked for rehearing,and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc,the petition for rehearing is DENIED.

BY THE COURT,

(s)Edward R.Becker
Circuit Judge

DATED:APR 12 1991